

SOROS FOUNDATION-MOLDOVA

REGULATION ON PROCUREMENT OF GOODS AND SERVICES

(Reviewed at the National Board in its meeting of May 28, 2009 and approved by e-mail on 6, 9, June 12 and July 12, 2009.
Final version presented for information at the National Board meeting of July 23, 2009. Modified in accordance with ED's order number 100, of 28.11.11)

1. Introduction

1.1 SFM Regulation on the purchase of goods and services by requesting price bids (hereinafter - Regulation) governs relations in the acquisition of goods and services needed to achieve the Foundation's charitable purposes and which fulfill the needs of the organization. Purchases serve to maximize the use of financial resources and extend the ability of the Foundation to accomplish its objectives.

This Regulation aims to:

- a) promote competition among operators;
- b) ensure equal treatment and non-discrimination of economic entities;
- c) ensure transparency and integrity of the acquisition process;
- d) ensure an efficient use of SFM funds through the application of procedures for the award.

1.2 This Regulation applies both in the case of purchase of goods and services for projects managed by the Foundation and the Foundation grants awarded to other institutions, except as provided for in this Regulation.

1.3 Presentation of Projects for Review and Approval to Program Boards or National Board

For projects requiring procurement of goods and services covered by this Regulation, the approximate amount of the project set by the responsible person (if necessary, after consulting an independent expert), proceeding from the average market price or based on at least 3 offers submitted by the applicant for funding, will be presented for review and decision of the program board or the National Board. If the project is approved by the program board or the National Board, the procurement will be made under this Regulation.

2. Definitions

Within this Regulation, the words and expressions have the following meanings:

- a) **accepting the winning bid** - the legal document by which SFM shows its legal consent to engage in a procurement contract to be concluded with the bidder whose bid has been designated as winner;
- b) **contract** - the contract for pecuniary interest concluded in writing between the SFM, on the one hand, and one or more operators, on the other hand, having as subject the execution of works, supply of products or services;
- c) **the contractor** - the bidder which has become, under the law, party to a contract;
- d) **request for proposals** - documentation that includes all the information relating to the subject contract and its award procedure, including the specifications or, where appropriate, descriptive documentation;
- e) **electronic means** - electronic equipment for processing and storing data that is broadcast, transmitted and received by wire, radio, optical or other electromagnetic means;
- f) **bidder/offerer** - any person or group that offers to do something or to provide something for a particular amount of money, in competition with others;
- g) **bid/offer** - the legal document by which the bidder has manifested its willingness to engage in legal terms in a contract, the bid includes a financial proposal and a technical proposal;
- h) **operator** - any provider of products, service provider or executor of works - a natural or legal person, public or private, or group of such persons who work lawfully in providing products, services and / or completion of works on the market;
- i) **award procedure** - steps to be taken by the SFM and the bidders for the agreement of the parties engaged in a procurement contract to be considered valid; award procedures include open tender, negotiation and request for proposals;
- j) **financial proposal** - part of the bid that contains information on prices, rates, other financial and business conditions appropriate to meet the requirements included in the request for proposals;
- k) **technical proposal** - part of the bid that has been developed based on the terms of reference, the task book, the

requirements of the specifications or, where appropriate, the descriptive documentation;
l) "writing" or "in writing" - any combination of words and numbers that can be read, reproduced and subsequently communicated. It may include information transmitted and stored electronically;
m) days - calendar days, unless specified that they are working days.

3. Types of acquisitions

Purchases may be of the following types: a) procurement of works, b) procurement of supplies, c) procurement of services.
a) procurement of works for: a) the execution or implementation of construction works, b) both the design and execution of works or both the design and implementation of a construction, c) a construction meeting the needs and objectives of SFM to be carried out by any means, to the extent to which they do not correspond to letters. a) and b). (2) the meaning of para. (1) construction means the result of a set of construction of buildings and civil engineering works, designed to satisfy an economic or technical function
b) supply contracts cover the provision of one or more products through the purchase, including by rates, rental or lease, with or without option to buy.
c) purchase of services cover the provision of one or more services.

4. Common Rules for the Award of a Contract

General Rules

4.1 The procedures for the award of the contract are:

- a) open tender - the procedure in which any interested economic operator shall be entitled to submit a bid;
- b) negotiation - the procedure through which SFM holds consultations with the candidate / candidates selected by SFM and negotiate with one or more of them contract terms, including price;
- c) request for proposals ("the three bids rule") - the simplified procedure by which SFM solicits bids from one or several economic operators.

4.2 SFM will purchase goods, services or works, using negotiation or request for proposals ("the three bids rule"), to the extent that the value of the acquisition does not exceed the equivalent in lei of 10,000 USD, and for publishing services purchases for the amount that does not exceed 5,000 USD for each purchase of goods, services or works. The acquisition is done under contract or other document which in this case, is considered to be a procurement contract and the obligation to comply with this Regulation is limited to the obligation to obtain and preserve documentary evidence of the procurement.

4.3 The selection of the procedures for awarding a contract shall be based on provisions, conditionalities and limitations provided for in this Regulation.

5. Persons Authorized to Do Procurements

The authority to procure goods and services needed to achieve the Foundation's mission is assigned to directors / coordinators of the Foundation's programs, and employees of the Foundation's administrative structure for the areas covered by their activities and budgets in accordance with the budgets approved by the Foundation's decision-making bodies. In exercising these powers, they will act in accordance with the objectives and procedures contained in this document.

6. Ethical Considerations

6.1 No employee of SFM should participate in the selection, award, or administration of a contract if a real or apparent conflict of interest would be involved. All purchasing shall be conducted in an impartial and ethical manner and without preferential treatment for any officer. In addition, all employees involved in procurement must comply with the policies on conflicts of interest and gifts and other internal regulations of the Foundation related to the subject of this Regulation.

6.2 All employees are required to maintain the integrity of the procurement process by, among other things, avoiding the disclosure of information regarding the procurement process and internal organizational decision-making to any party lacking a legitimate need to know or for whom that knowledge would create a competitive advantage. Failure on the part of SFM employees to maintain procurement process integrity is grounds for disciplinary action.

6.3 The Principles Underlying the Award of Contracts Are:

- a) non-discrimination;
- b) equal treatment;
- c) transparency;
- e) proportionality;
- f) effective use of funds;
- g) taking responsibility

6.4 Rules to Avoid Conflict of Interests

During the application procedure, SFM is required to take all necessary measures to avoid situations likely to cause a conflict of interest and / or manifestation of unfair competition.

SFM staff directly involved in the review/ evaluation of offers shall not have the right to be candidate, offer associate or subcontractor, under penalty of application of disciplinary measures.

The contractor is not entitled to engage, in order to fulfill the contract, natural or legal persons who were involved in the review/ evaluation of the bids submitted for the procedure for award of the contract.

7. Initiation of a Procurement Procedure

After project approval by the program board or the National Board, the Foundation staff may initiate the process of buying goods or services by preparing the purchase request. In drawing up the invitation to tender, (if necessary) a member of the procurement commission or an independent expert in the field will be consulted.

7.1 SFM is required to specify in the purchase request any requirement, criteria, rules and other information necessary to ensure comprehensive, fair and explicit information for offerors, about the selection process.

7.2 The purchase request shall include, but not be limited to at least the following:

- a) general information about SFM, in particular of the address - including phone, fax, email, other means of communication, etc.;
- b) the program or project (beneficiary) who organizes the purchase ;
- c) name of goods or services grouped into lots (the lots are considered indivisible units, and decision is taken on the entire lot);
- d) information about the fact that lots are indivisible units;
- e) accurate (precise) qualitative and quantitative requirements (volume, units, etc.);
- f) the currency of the bid (specifying that the payment will be made in MDL at the NBM rate on the day of the transfer);
- g) the contract provisions (type of payment: advance or reimbursement, installment payments);
- h) marking, storage, delivery;
- i) the place and deadline for submission of bids (day, time, but not before 7 days of tender announcement day);
- j) full and detailed information on the criteria for evaluating and selecting the winning bid (evaluation per good / product or per lot);
- k) other information, depending on the specific good or service ;
- l) contact person;
- m) limits (deadline) of the validity of the offer;
- n) minimum qualifications and documents to be submitted by the bidders to demonstrate compliance with the criteria for qualification and selection,
- a) the task book, terms of reference or other descriptive documentation, the latter being used when applying to the negotiation and selection;
- p) instructions on how to prepare and submit technical and financial proposals;
- q) information on the required contract provisions.

The purchase request must identify the quantity and nature of the goods to be purchased or, in the case of service procurement, the tasks to be performed or deliverables. It is forbidden to define in the task book/terms of references the technical specifications aimed at favoring or eliminating certain economic operators.

SFM is required to ensure that the purchase request is obtained by any interested economic agent who makes a request to that effect, by providing a copy of the purchase request on paper and / or electronic form. The employee is responsible for assessing the needs of procurement and the budgetary funds are available under appropriate budget lines. Also, before purchasing, the buyer must examine existing resources or whether there are other alternatives to purchases. The employees of the Foundation, in accordance with internal regulations, will establish the appropriate procurement procedures (open tendering, negotiation, and request for purchase).

Any requests for purchases related to catering events (including purchase requests) and office equipment/ office furniture / (other than computers, computer related items and cell phones, or information technology related items) must be purchased through or with the prior written approval of the Operations Manager of the Foundation.

Any requests for purchases related to computers, computer related items and cell phones, or information technology related items must be purchased through or with the prior written approval of the Network Administrator.

7.3 In the case of an tender open, the person authorized to do the procurement shall send by e-mail to the members of the Procurement Commission the draft text of the solicitation for bids containing the procurement request for proposals and the specifications / terms of reference at least three days before it being published on the site or in the press. The person authorized to do the procurement will consider all the objections expressed by the members of the Procurement Commission before publishing the announcement.

8. Announcing the Invitation for Bids or Request for Proposals

SFM is required to ensure the transparency of contracts award by posting an announcement on its official website and, where necessary and useful, in other relevant publications. For purchases with a budget equal to or greater than 10,000 U.S. D., SFM is required to publish the announcement about the solicitation for bids additionally in the print media with a national circulation.

8.1 Rules of Communication and Data Transmission

- 1) Any communication, demand, information, notification, and the like, provided for in this Regulation must be submitted in writing.
- 2) Any written document must be registered at the time of transmission, and respectively, upon receipt.
- 3) Communication, transmission and storage is done in order to ensure the integrity and confidentiality of data.
- 4) Written documents can be submitted by any of the following ways:
 - a) by post (mail);
 - b) by fax;
 - c) by electronic means;
 - d) any combination of those referred to under. a) - c).
- 5) SFM has the right to require in the request for proposals the ways of communication that should be used during the application procedure.
- 6) The methods of communication required by the SFM shall not restrict the access of economic operators to tender procedures.
- 7) The economic operator has the right to submit a request to participate in the award by any of the ways provided in the tender documents.
- 8) SFM is entitled to require that any request to participate in the award, which was transmitted by fax, to be confirmed within a reasonable time, by sending it by mail or electronically. In this case, the SFM is required to introduce this requirement and the period within which it must be satisfied in the announcement about the purchase request.

9. Award Procedures

9.1 Open Tender

The open tender procedure applies in the following cases:

- the purchase price provided under a project administered by the Foundation or within a grant awarded by the Foundation to another institution (beneficiary) is equal to or greater than 10,000 U.S.D., and for editorial-printed works – the purchase price is equal or more than 5,000 USD.
- over a period of time, several decisions were taken for purchase of goods or services similar in price the total sum of which is equal to or greater than 10,000 U.S.D.

9.1.1 The open tender procedure takes place usually in a single or double phase in compliance with this Regulation. SFM has the right to decide to hold another round of the tender aiming at improving the price; however this should be announced in the request for proposals.

9.1.2 The open tender procedure is initiated by a mandatory announcement requesting interested operators to submit offers on the official site of the SFM and, where necessary and useful, in other relevant publications. For purchases with a budget equal to or greater than 10,000 U.S.D, SFM is required to publish the tender announcement in newspapers with a national circulation.

9.1.3 The period between the date of the first announcement and the deadline for submission of bids must be at least 7 days.

9.1.4 Any interested economic operator shall be entitled to request and obtain the request for proposals.

9.1.5 (1) Any interested economic operator has the right to request clarification on the request for proposals. (2) SFM is required to respond clearly, completely and unambiguously, as soon as possible, to any clarification sought, within a period not exceeding, usually 3 working days from the receipt of such a request from the operator. (3) SFM is required to provide the answers - accompanied by related questions - to all operators that have acquired the request for proposals under this Regulation, taking measures not to disclose the identity of those requesting clarification.

9.1.6 (1) Provided that the requested clarification is timely, the response to these requests by SFM must be submitted no later than 5 days before the deadline for submission of bids. (2) If the operator did not submit the request for clarification in time, thus SFM being unable to meet the deadline set out in para. (1), the latter is, however, obliged to respond to requests for clarification provided that the period required for clarification and response allows receiving it by economic operators before the deadline for submission of offers.

9.1.7 SFM is required to open bids on the date, time and place specified in the announcement about the tender and invite bidders to participate in the opening of tenders. If for some reason, the date, time and place of the meeting for opening the bids is modified, SFM is required to notify all participants in the competition on this modification.

9.2 Negotiation

9.2.1 SFM is entitled to apply a negotiation procedure in the following cases:

- a) when, following the application of an open tender or request for proposals, there have been made no offers or have been submitted only unacceptable or inconsistent bids. The application of the negotiation procedure in this case is only possible after the cancellation of the original tendering process, or bidding and only if the original requirements specified in the request for proposals are not altered substantially;
- b) when, for technical, artistic, or for reasons of protection of exclusive rights, the procurement contract can be awarded only to a particular operator, or a very limited number of operators;
- c) as a strictly required measure when the period for application of the open tender or the call for purchase proposals cannot be met for reasons of extreme urgency brought about by unforeseeable events and are not due to any actions or lack of such by SFM. SFM is not entitled to establish a contract duration longer than that required to meet the emergency situation that caused the procedure of negotiation;

d) when it is necessary to purchase from the original supplier additional quantities of products for partial replacement or extension of equipment / facilities previously supplied, and only if the change of the initial supplier would put SFM in a position to buy products with technical characteristics different from the existing ones, which will bring incompatibility or technical difficulties in operation and maintenance.

e) when it is necessary to purchase additional / extra works or services which were not included in the original contract but which through unforeseen circumstances, have become necessary to fulfil that contract, and only if they comply, cumulatively, with the following conditions: - the additional award is to be made to the initial contractor; - the additional works or services cannot be technically and economically separated from the original contract without major inconvenience for the SFM; and, although separable from the original contract, they are strictly required to perform it;

f) when, after a contract for works or services has been awarded, SFM needs to acquire new works or new services, which are similar to the works or services purchased within the original contract award and only if they comply, cumulatively, with the following conditions: - the award is made to the initial contractor and the new works or the new services consist in the repetition of similar works or services under the contract initially awarded and comply with the requirements of the task book/terms of reference developed for the award of that contract; - the initial contract for works or services was awarded through an open tender.

9.2.2 (1) SFM conducts negotiations with each candidate separately during which all the technical, financial and legal aspects of the future contract are defined.

(2) During negotiations, the SFM is required to ensure the principle of equal treatment to all candidates. In this sense, SFM is not entitled to provide information in a discriminatory manner, which could create one / some of the candidates an advantage in relation to others.

(3) SFM has the obligation not to disclose, without the consent of the candidate in question, the proposed offer or other confidential information submitted by the candidate.

9.2.3 (1) SFM conducts negotiations to identify and determine the best bid from an economic point of view;

(2) SFM is required to ask the candidate, who as a result of negotiations, has offered the most economically advantageous proposal, to reconfirm the result of negotiations by filing a final offer.

(3) The bidder has no right to make any changes to the items agreed upon during the negotiating process the final offer.

9.2.4 It is important, however, to do a preliminary broad market research to identify a great number of bidders to ensure an effective competition.

9.3 Request for Offers ("The Three Bids Rule")

9.3.1 SFM is entitled to apply this purchase procedure only if the estimated contract value is more than the equivalent in lei of 1.000 USD but less than 10,000 USD, and for editorial -printed works the amount is more than the equivalent in lei of 1.000 dollars but less than 5.000 USD.

9.3.2 The request for proposals is initiated with an invitation to interested economic operators requesting the submission of offers.

9.3.4 The invitation includes the following information:

- a) the date and time limit for the receipt of offers;
- b) the address to which offers should be transmitted;
- c) indicate the required minimum qualification criteria, if necessary.

9.3.5 For procurement of goods and services costing more than 1,000 U.S. D. but less than 10,000 U.S.D., in the framework of the grants awarded by the Foundation the "rule of the three bids" is also applied. In this case, the grant recipient will present to

the Foundation (Grant Manager, Network Administrator, and will inform the Director of the program) before the purchase, the documents certifying the selection of goods or services from a particular economic operator and namely:

- the offers of the operators (not less than three), which were considered in choosing goods and services (the offers must include the address, phone and bank requisites of the offerer, date, director's signature and stamp);
- documented arguments in favor of selecting the best offer.

Payment for the best offer may be undertaken only after its approval by the Foundation (signed by the Program Director and Grant Manager, or the Network Administrator).

9.3.8 The same rule applies in the case of operational projects managed by Foundation staff. In this case, the program director will review the three bids and will present, in writing, the arguments for selecting the best offer. That document will contain the list of bidders and will make the recommendation for the best offer proposed by the program director and the reasons behind it. The document in which the three bids have been reviewed and the best offer recommended by the program director will then be presented to the Deputy Director for review and final approval. In the case of procurement of electronic equipment, the proposed offer for approval by the program director shall be countersigned by the Network Administrator.

10. Requirements of Other Donors / Sponsors

SFM can implement projects funded by a donor organization / sponsor (e.g.: the Global Fund, World Bank, Sida, U.S. Agency for International Development (USAID), etc.) which, in accordance with the provisions stipulated in the contract signed with SFM, requires compliance with certain (specific) procurement procedures (for example, the rules of procurement of the donor). If the procurement procedures (regulations) are imposed by the donor, SFM will set up a procurement commission for this project and will comply with the procedures required by the donor, and the document that sets the procurement rules (for example: regulation procurement of the donor) will serve as a basis for action.

11. Promoting Competition

It is SFM policy that procurement transactions be conducted in a manner that provides for competition to the maximum extent practicable. The Foundation staff are encouraged and permitted to develop and maintain bidders' lists and other information about sources of supply and services. However, periodically such lists may be reviewed and names may be removed based on evidence of lack of interest or past performance problems.

Any formal solicitation document shall contain notice that SFM reserves the right to reject all offers and to waive technicalities and to pursue purchasing in a manner that is in the best interests of the organization.

Departures from solicitation of the marketplace and subsequent competition must be justified as exceptions in accordance with the following procedures:

11.1 Small Purchases

In some cases, the size of a purchase will not reach a monetary level where the savings achieved by formal solicitation and competition will offset the cost of undertaking those procedures. Accordingly, the buyer shall have the authority to waive and limit competition for goods and/or services totaling less than 1,000 USD.

11.2 Emergencies

In some cases, the need for goods or services may be of sufficient urgency that proper solicitation and competitive procedures cannot be implemented within established timelimits. In such cases, the buyers are permitted to conduct a purchase under emergency procedures in which competition is waived. Any purchase request that is approved under these procedures is to be accompanied with a written justification, signed by the appropriate buyer, identifying the circumstances that warrant the action. Emergency procedures are not to be used to justify routine purchases that could have been accomplished in accordance with competitive procedures if proper planning by staff had been undertaken.

11.3 No Responses to Competition

Whenever competition is solicited and SFM receives only one responsive offer or receives no formal offers, after the review of this situation by the Procurement Commission, the deadline for the solicitation of bids is extended within the same initial conditions. If after this, SFM receives only one responsive offer, the buyers are authorized to proceed to negotiate a purchase order or contract that is in the best interests of SFM without re-soliciting the marketplace or other further attempts at competition. The details of such negotiations will be reduced to writing and maintained in the purchasing records.

11.4 Sole Sourcing

The buyer shall have the authority to waive and limit competition if a sole sourcing is justified.

Sole sourcing may be requested under the following circumstances:

- product or proprietary services are unique or the product or service is available from only one source;
- when the services are procured under Original Equipment Manufacturer requirements for equipment currently under lease, warranty or maintenance agreement;
- product is compatible with existing systems; or professional advice or expertise is being requested.

The buyer shall present the sole sourcing cases to the Procurement Committee for review and approval, accompanied with a written justification, entered in the purchase records.

11.5 Unsolicited Offers

From time to time, SFM may receive unsolicited offers to provide goods and/or services. Purchases may be initiated in response to such offers without competition only in cases where the monetary amount does not exceed the SFM small purchase threshold identified above or in cases where the buyer specifically approves the action and enters a written justification in the purchase records.

Whether a vendor has been selected through competition or otherwise, it is SFM general policy that all agreements for goods and services with a particular vendor should be put out for bid or its sole source justification reviewed after a reasonable period of time has lapsed (e.g., three to five years).

12. Contract Award

12.1 Technical and financial proposals

12.1.1 The offeror shall be required to prepare the offer in accordance with the requirements contained in the invitation for bids (specifications) or request for proposals.

12.1.2 The offer is binding in terms of content, throughout the period of validity established by the SFM.

12.1.3

- 1) The bidder is required to submit the bid to the address and by the date and time limit set out in the invitation for bids or request for proposals.
- 2) The risks of transmission of the bid, including the force majeure, are the responsibility of the operator.
- 3) The offer made to an address other than that set out by the buyer or after the deadline for submission shall be returned unopened.
- 4) The content of the bids or offers must remain confidential until the date fixed for opening them; SFM will get acquainted with the contents of these offers only after that date.

12.2 Submission of Bids or Offers

(1) bids (technical and financial proposals) are to be submitted to the Foundation to the attention of the Financial Director, in sealed envelopes, indicating the name of the bidder/offeror, the signature of the Director and stamp on the back of the envelope.

At the request of the bidder, the Foundation will issue a receipt which will indicate the date and time of the receipt of the offer.
(2) If the bidder submits bids by fax or e-mail timely they will be considered by the procurement committee, but in this case the Foundation bears no responsibility for the confidentiality of information. Bids received by the program director by e-mail will be forwarded to the Financial Director of the Foundation.

(3) the receptionist of the Foundation will introduce a special register of received bids/offers, indicating the date and time that the offer was received after that will submit them to the Financial Director of the Foundation. The Financial Director shall present the bids to the Procurement Committee, in a meeting organized by the Program Director or other person responsible for the tender.

12.2 Selection and Qualification of Bidders. Qualifications and Selection Criteria

12.2.1 SFM has the right to apply qualification and selection criteria relating to:

- a) the personal situation of the bidder;
- b) the ability to exercise the professional activity;
- c) economic and financial situation;
- d) technical capacity and / or training;
- e) quality assurance standards;
- f) environmental protection standards.

12.2.2 Bidders are entitled to presenting any documents with the purpose of demonstrating compliance with certain requirements and how they will meet these requirements. SFM is entitled to request, if necessary, clarification or for additional documents.

12.2.3 SFM is required to specify in the invitation for bid or request for proposals the minimum requirements that bidders must meet to qualify.

12.3 Personal Situation of the Bidder

12.3.1 If aware, SFM is required to exclude from the procurement procedure applied for the award of a contract any bidder that over the past 5 years, was sentenced by final decision of a court for participation in the activities of a criminal organization for corruption, fraud and / or money laundering.

12.3.2 SFM has the right to exclude from a contract award procedure any bidder who is in any of the following situations:

- a) is bankrupt, dissolved or in the process of liquidation; the business affairs are run by a judicial administrator; its commercial activities are suspended or subject to an arrangement with creditors or is in a situation similar to the previous, regulated by law;
- b) is subject to legal procedures for declaring a situation referred to in the letter. a);
- c) has not fulfilled obligations to pay taxes and social security contributions in accordance with legal provisions in force in Moldova and/or country of residence;
- d) during the past 2 years, has not met or has met contractual obligations badly, for reasons attributable to the bidder which has caused or is likely to cause major damage to its beneficiaries;
- e) in the past three years, has been convicted by the final decision of a court for an act which brought damage to professional ethics or has committed a professional mistake;
- f) provides false information or does not submit information requested by the SFM, in connection with the situation of the related cases referred in point. a)-e).

12.3.3 (1) SFM is required to accept as sufficient and relevant to demonstrate that the candidate does not fall within one of the situations referred to in paragraphs 12.3.1 - 12.3.2 any documents which are enlightening in this respect, issued in the country of origin or the country where the bidder is established, such as certificates, criminal records or an equivalent document issued by the competent authorities of that country.

(2) Where there is uncertainty regarding the personal situation of the respective bidders, SFM is entitled to directly request information from the competent authority issuing the documents of the kind referred to in para. (1).

(3) Where the country of origin or the country where the bidder is established does not issue documents such as those provided under par. (1) or those documents do not cover all situations referred to in paragraphs 12.3.1 - 12.3.2, SFM is entitled to accept a sworn declaration or, if there are no legal provisions for the declaration of honor, an authentic declaration made before a notary, an administrative or judicial authorities or associations having jurisdiction thereof.

12.4 Ability to Exercise a Professional Activity

12.4.1 SFM has the right to require any operator to produce edifying documents to prove the form of registration as a natural or legal person or entity and, where appropriate, certification or membership in professional terms, in accordance with the provisions of the country where the bidder is established.

12.5 Economic and Financial Situation

12.5.1 (1) SFM has the right to request that the bidder that participates in the award of a contract to show its economic and financial situation.

(2) If the SFM requires demonstration of economic and financial situation, then it is required to indicate it in the request for proposals and what specific information the operators are to submit for this purpose.

12.5.2 (1) The demonstration of the economic and financial situation is made, where appropriate, by presenting one or more relevant documents such as:

- a) relevant bank statements or, where appropriate, evidence of professional risk insurance;
 - b) the balance sheet or extracts from balance sheets, where publication of balance sheets is required under the law of the country where the bidder is established;
 - c) statements of overall turnover and, where appropriate, of turnover in the field of activity for the subject of the contract in a prior period, in the past three years, to the extent that this information is available; in the latter case the SFM is required to take into account the date on which the operator was established and began its activity.
- (2) If, for objective and justified reasons, the trader is not able to provide the documents requested by SFM, it has the right to demonstrate its economic and financial situation by presenting other documents that the SFM can consider conclusive, since they reflect an accurate picture of the economic and financial situation of the bidder.

12.6 Technical and / or Professional Ability

12.6.1 (1) SFM has the right to request that the bidder/offeror that participates in the award of a contract to show its technical capacity and / or training.

(2) If the SFM requires the demonstration of the technical ability and / or training, then it is required to indicate in the invitation for bids or request for proposals the information that operators are to submit for this purpose.

(3) The technical and / or training of a bidder shall be assessed in the light of experience, skills, efficiency and effectiveness resulting from the analysis of information submitted during the tender procedure.

12.6.2 (1) In the event of a procurement procedure for awarding a supply contract, in order to verify the technical and / or professional capacity of the bidders, SFM is entitled to require from them, according to the specifics, the quantity and complexity of the products to be provided and only to the extent that such information is relevant to fulfilling the contract, the following:

- a) a list of main deliveries over the past 3 years, containing values, delivery period, beneficiaries, whether the latter are contracting authorities or private clients. The deliveries of products are confirmed by the presentation of certificates / documents issued or countersigned by an authority or by the beneficiary customer. If the beneficiary is a private customer and, for objective reasons, the vendor is not able to obtain a certification / confirmation, the demonstration of deliveries is to be made by a declaration of the operator;
- b) a statement relating to the technical equipment to be used and the measures applied to ensure quality and, where appropriate, resources for study and research;
- c) information on staff / the specialized technical body which has or whose commitment to participate was obtained by the offeror, in particular to ensure quality control;
- d) certificates or other documents issued by the bodies empowered for that purpose, attesting the conformity of products clearly identified by reference to specifications or standards;
- e) samples, descriptions and / or photographs whose authenticity must be proved if the SFM requests.

(2) In the event of a procurement procedure for awarding a service contract, to verify the technical and / or professional capacity of bidders, SFM is entitled to require them, according to the specifics, the volume and complexity of the goods to be provided and only to the extent that such information is relevant to fulfilling the contract, the following:

- a) a list of principal services provided in the last 3 years, containing values, period of service provision, beneficiaries, whether the

latter are contracting authorities or private clients. The services are confirmed by the presentation of certificates / documents issued or countersigned by an authority or by a private client beneficiary. If the beneficiary is a private customer and, for objective reasons, the offeror is not able to obtain a certification / confirmation, the demonstration of service provision is made by a statement of the operator;

- b) a statement relating to the technical equipment that will be used and the measures applied to ensure quality and, where appropriate, resources for study and research;
- c) information on staff / or a specialized technical body which has or whose commitment to participate was obtained by the offeror, in particular to ensure quality control;
- d) information on education, training and qualification of staff and the persons responsible for carrying out the service contract;
- e) where appropriate, information on environmental protection measures that the operator may apply in carrying out the service contract;
- f) information on equipment, facilities, machinery the offeror can provide for the proper execution of the service contract;
- g) information on the proportion of the service contract to be performed by subcontractors and their specialization.

(3) In the case of procurement procedures for the award of a works contract, to verify the technical and / or professional capacity of bidders, SFM is entitled to require from them, according to the specifics, the volume and complexity of the work which is to be performed and only to the extent that such information is relevant to fulfilling the contract, the following:

- a) a list of works executed in the last 5 years, accompanied by a certification of performance for major works which will contain values, date and place of execution of works, the fulfillment of obligations, beneficiaries, and whether they are contracting authorities or private clients;
- b) information relating to staff / or a specialized technical body which has or whose commitment to participate was obtained by the bidder, in particular to ensure quality control;
- c) information on education, training and qualification of staff, as well as of those responsible for execution of works;
- d) where appropriate, information on environmental protection measures that the operator may apply in fulfilling their contract;
- e) a statement relating to equipment, facilities, machinery the operator can provide for the fulfillment of their contract;
- f) information on the part / parts of the contract to be performed by subcontractors and their specialization.

12.5.3 When a group of economic agents make a joint bid, the technical and professional capacity is demonstrated by considering the resources of all group members.

13. Establishing the Winning Bid/Offer

13.1 SFM is required to determine the winning bid based on the award criteria specified in the invitation for bids and the request for proposals, provided that the bidder meets the required selection criteria and qualifications.

13.2 During the application procedure for the award, SFM is entitled to seek clarification and, where appropriate, ask for additional documentation to be submitted by bidders to demonstrate how they meet the requirements of the qualification and selection criteria or to demonstrate compliance with the requirements of the tender.

13.3 Where an offer is an apparently unusual low price compared with what it is to be supplied, performed or provided, before taking a decision to reject that offer, SFM is required to ask the bidder details and explanations on offer in writing which they consider important and to check the answers that justify that price.

13.4 (1) SFM is required to sign a procurement contract with the bidder whose bid has been established as the winner based on technical and financial proposals contained in the bid.

(2) If SFM cannot sign a contract with the bidder whose offer has been established as the winning bidder because the bidder is in a situation of force majeure, then SFM is entitled to:

- a) declare the winning bid ranked second;
 - b) cancel the procedure for award of the contract.
- (3) SFM is required to ensure the record keeping of documentary evidence for any purchase.

13.5 (1) SFM is entitled to sign the purchase contract only after reaching a period of 3 days from the date of the transmission of the information about the results of the application procedure.

14. Informing the Bidders/Offers about the Tender Results

14.1 SFM is required to inform bidders about the decisions on the award of the contract, or, where appropriate, to cancel the award procedure (including the valid reasons which led to the decision to cancel it) and possible subsequent opening of a new procurement procedure.

14.2 SFM is entitled not to disclose certain information, but only if the disclosure:

- a) would lead to the breach of legal provisions; would impede the implementation of legal provisions or would be contrary to public interest;
- b) would prejudice legitimate commercial interests of economic operators, public or private, or might prejudice a fair competition between them.

15. Cancellation of the Application Procedure for the Award of a Contract

(1) SFM has the right to cancel the procedure for the award of a contract, if it takes that decision, usually before the transmission of the information on the outcome of the application procedure for the award and before concluding the contract, only in the following cases:

- a) has not been possible to ensure a satisfactory level of competition, namely the number of bidders is less than the minimum provided for each procedure in this Regulation;
- b) none of the bidders succeeded in meeting the qualification requirements specified in the documentation for the development and presentation of the offer;
- c) have been submitted only unacceptable and / or inaccurate offers which:
 - were not prepared and submitted in accordance with the requirements for preparing and submitting tender documentation;
 - the financial proposal contains prices agreed upon a cartel decision or with a large deviation from the average market prices (in the case when the average prices can be determined from published price-lists on businesses' websites) and which not cannot be duly justified;
 - the amount included in the financial proposal exceeded the allocated funds to fulfil the contract, or the amount budgeted by the Foundation for this procurement does not cover the lowest bid.
- d) serious violations of the laws affecting the award procedure make it impossible to sign the contract;

(2) The Foundation shall communicate in writing to all participants in the procurement, within 2 days after the cancellation, the termination of the obligations that they have created by submitting offers and the reason for canceling

16. Contract Administration

Contract administration actions involve taking of appropriate measures to ensure that contractors act in accordance with the terms and conditions or specifications of the contract. These actions are to be taken by the person(s) responsible for contract administration. Contract management actions will vary depending on the nature of the goods or services purchased and the nature of the contract price.

With respect to the purchase of goods, the following actions are appropriate:

- enforce delivery schedules;
- inspect deliveries to assure completeness;
- reject or cause alteration in unsatisfactory deliveries;
- accept proper deliveries and forward approved invoices for payment; and
- enforce warranties.

With respect to purchases of services, the following actions are appropriate:

- monitor contractor performance;

- compare contract methods and/or deliverables to identified performance criteria;
- instruct the contractor concerning acceptable performance within the scope of the contract; and
- accept or reject deliverables in accordance with contract terms and conditions and forward approved invoices for payment.

17. Recordkeeping

17.1 SFM is required to maintain the procurement records for each awarded contract.

17.2 The procurement records for purchases and all the bids accompanied by the qualification and selection criteria are maintained by SFM during the procurement contract legal effect, but not less than 5 years from the date of the completion of the contract. In the case of the cancellation of the award procedure, the record is kept for at least 5 years from the date of the cancellation of that procedure.

17.3 (1) The purchase records will contain any document that is pertinent to the history of that procurement including, at a minimum:

- a) note on how the purchase value was estimated (if any);
- b) information related to the purchase request, solicitation, and degree of competition pursued (including a listing of all parties that sought solicitation documents and that submitted offers);
- c) invitation for bids; request for proposals; task book; terms of reference
- d) minutes of the meeting on opening of offers which include information that demonstrates how the successful offeror was selected;
- e) application forms submitted during the award procedure;
- f) requests for clarification and clarifications sent or received by SFM;
- g) evidence of informing about the results of the procurement procedure;
- h) a signed contract;
- i) complaints made during the procurement procedure, if any.
- j) justification for the absence of competition when competitive offers were not obtained

(2) The minutes are prepared and signed before signing the contract and shall include at least the following elements:

- a) the name and address of SFM;
- b) the subject of the contract;
- c) the name or names of the candidates participating in the procurement procedure;
- d) the name or names of the selected and unselected candidates, and the basis for the award or the rejected candidates;
- e) if applicable, specific reasons for which one or more of the offers were rejected because of considering the price presented as unusually low;
- f) the name or names of the bidders whose bid/offer has been declared the winner and the basis for that decision;
- g) if applicable, the name or names of subcontractors;
- h) where appropriate, the justified decision to cancel the tender procedure.

17.4 The relevant information about the purchased goods will be also recorded in the balance accounts for any goods that meet the definition of SFM asset of a given value (the present regulation is for assets with a value of more than 3,000 MDL).

18. Arbitration

18.1 1) Complaints, disputes or claims relating to the request for proposals and the procurement procedure may be addressed to SFM by interested economic operators not later than 3 days from the receipt of purchase documentation or after being informed about the results of the procurement procedure, if applicable. These will be addressed by the Procurement Committee in the course of 7 days after receiving the appeal.

2) The receipt of such a claim does not lead to suspending the procurement procedure if it is not substantially affected.

3) After receiving the decision on the result of resolving the appeal by SFM, dissatisfied bidders can appeal it to a competent

court.

18.2.1) Claims and complaints may be made by those businesses that:

a) have a legitimate interest in connection with a contract awarded in accordance with the provisions of this Regulation;
b) have been prejudiced, are being prejudiced, or are likely to be prejudiced as a result of an SFM act, such as to produce legal effects.

(2) is considered an act of SFM:

a) any administrative act of SFM;
b) lack of issuing an administrative or any other act by SFM or refusal to issue such an act;
c) any other act of SFM, other than those referred to a) or b), which produce or may produce legal effects.

(3) The subject of an appeal may be the annulment of an act; the obligation of the SFM to issue a document; ordering SFM to take any other measures necessary to remedy provisions affecting the award procedure.

19. Procurement Commission

19.1 (1) For the award of contracts, SFM has established a Procurement Commission.

(2) The Procurement Commission (hereinafter Commission) is responsible for selecting the best bid. The Commission is made up of at least five members appointed by order of the Executive Director, including the person responsible for organizing the procurement. If necessary, the Foundation will contract an independent expert in the field as a member of the Commission, whose services will be paid out of the budget of the program organizing the procurement.

(3) For different types of purchases, commissions with a different composition can be created.

(4) The Commission shall hold meetings as appropriate. To be considered deliberative, the Commission must meet at least three members. Commission decisions shall be adopted by consensus. If the Commission fails to reach a consensus, the decision can be taken by a majority vote of the members present at the meeting.

(5) The person directly responsible for organizing the procurement is the director of program within which the procurement is organized.

19.2 Commission Meeting

The Program director or any other person designated within the program is responsible for organizing the procurement. The responsible person for organizing the meeting sets the time, date and place of the procurement meeting in agreement with the other members of the Commission.

The responsible person for organizing the meeting shall present to the Commission, the announcement about the procurement including the invitation for bids or the request for proposals, the lists of economic operators that have been announced and the forms for identifying the conflict of interests (1 copy for each member of the Commission).

The Commission members will check if the envelopes are sealed and then will open the bids. They shall verify the offers' compliance with the requirements originally submitted by the Foundation and shall announce the name and data contained in each bid, which is recorded in the minutes.

Representatives of the bidding company may participate during the opening of the bids. Also, at the request of absent bidders, the SFM may offer them information on all those which participated in the tender. After the opening of the bids and before examining, evaluating and comparing them, each member of the Commission will complete the conflict of interest form (Annex. 3) declaring any conflict of interest within the meaning of p.5 of the Regulation on the Organization and Operation of the Soros Foundation-Moldova and SFM Regulation on Conflict of Interests. The verification for a possible conflict of interest will be carried out by the SFM Grant Manager who will countersign the minutes of the meeting.

19.3 Evaluation of tenders in accordance with the selection based on quality and price (in case of the acquisition of works and services)

Evaluation of tenders on the basis of quality and price are conducted in two stages. First the quality of the technical offer is assessed and then the financial offer/cost is evaluated. The evaluators of the technical proposal will have no access to the financial proposals

until the technical bid evaluation is completed. Financial proposals will be opened only after the technical tender evaluation process was completed.

The combined assessment of costs and quality will be conducted in full conformity with the tender portfolio. The Procurement Commission or independent experts will evaluate each technical proposal taking into account several criteria such as: experience, the quality of the methodology, qualifications of key personnel and other factors required in accordance with tender documents and the Terms of Reference previously announced.

The technical proposal will be rejected at this stage, if not responding to important aspects of the terms of reference or if that fails to attain a minimum score specified in the technical specifications.

After completion of technical bid evaluation, the person responsible for procurement prepares a report (minutes) on the technical evaluation of the quality of proposals. In this report the results are argued for, describing the strengths and weaknesses of the technical proposals and indicating the scores/ points for each proposal.

Then, during the second stage, the Procurement Commission will open in accordance with the procedures indicated above, the financial proposals of those proposals that have met the minimum technical score. The other financial proposals that did not meet the minimum technical score, will be returned unopened. The score for financial offer is calculated using the formula presented in Appendix no. four.

The total score is obtained by adding up the score obtained for technical and financial offer. The weight (value) of the technical and financial proposals will be specified in the terms of reference and as a rule, the financial offer weight will be in the range of 10-90 percent of a total score of 100 percent, respectively, the technical offer will range from 90 -10 percent of a total score of 100 percent.

Finally, the person responsible for the procurement prepares an evaluation report to be signed by the members of the Procurement Commission. Then the offeror who obtained the highest overall score will be invited to sign the procurement agreement.

19.4 Review, Evaluation and Comparison of Bids

The Commission may ask the bidder to provide explanations on the offer to facilitate the examination, evaluation and comparison of bids. Changes, including modifications of the price that would make the offer meet requirements which initially did not correspond are not allowed. The Commission will only correct arithmetical errors, detected during the examination of the offers and notify the bidder about them immediately.

The Commission may consider the offer consistent with the requirements if it contains some minor deviations from the conditions required by the Foundation, i.e. errors or omissions that may be corrected without affecting its essence. The Commission will not accept the offer if:

- a) the bid does not meet the initial requirements announced by the Foundation;
- b) the bidder does not accept the correction of arithmetic errors.

The Commission shall review and compare the offers received in response to solicitation and competition or through other means against identified selection criteria contained in the invitation for bids (specifications) or request for proposals (multiple factors presented according to relative weight or importance to determine the winning bid. In selecting the best offer they will take account the following:

- a) a cost or price analysis will be conducted to determine whether prices offered or costs which are combined in an offer are reasonable;
- b) deadlines for the delivery of goods or execution of an order;
- c) the quality of works offered;
- d) the guarantee conditions.

The Commission will consider the offer invalid for a specific group, in case the bid for the lot is incomplete (does not include all the sections of the lot).

If prices of the offer are expressed in two or more currencies, then, to facilitate review and comparison of bids, the prices of all bids will be recalculated in accordance with a single currency at the exchange rate set by BNM on the day of the Commission meeting.

19.5 Decision

The decision on the optimal bid shall be recorded in the minutes of the meeting which shall be signed by the members of the Commission. The decision will be made known to bidders.

The specialized program board or the National Board of the Foundation shall be informed, about the decision made by the Commission.

The person responsible for organizing the procurement will contact the winning bidder and prepare the contract considering the conditions of the tender.

20. Peculiarities of Procurement of Editorial-printed Works

This Regulation shall apply in cases of editorial-printed orders for the amount exceeding 5,000 USD, both in projects administered by the Foundation, and under grants awarded by the Foundation to other institutions. For editorial-printed orders between 1,000 USD and 5,000 USD, the "rule of three bids" is applied.

This Regulation shall not apply where:

- The editorial-printed work (book publishing) appeared in a special series of a publishing house which was selected based on a previous competition organized by the Foundation;
- The editorial-printed work was an initiative of a publisher and was approved by the decision-making body of the Foundation.

When editorial-printed projects that fall under this Regulation are presented for review and decision of the program board or the National Board, the estimated budget of the project will be presented, assessed by an independent expert proceeding from the complexity of the book (pictures, number of pages, translations, colors, cover, etc.).

A request for proposals for editorial-printed works will include:

1. Name of program or project (beneficiary) organizing the procurement
2. Title (titles) of the book / editorial-printed work
3. Author
4. Physical parameters, including the estimated volume of the work/book (format, number of pages), the illustrative material and the color formula of the book (which are set, if necessary, by an independent expert)
5. Cover (cardboard, color)
6. Facts about the images used, drawings, annexes
7. Print-out (some variants may be required)
8. Conditions of marking, storage, delivery, distribution
9. The main contract provisions to be concluded with the winner in the bid, including:
 - a) procedures for tracking the quality of the text, illustrations, design, and actions in cases when the quality of these components is considered by the Foundation to be inadequate. In particular, we will notify bidders, that the Foundation will commission an independent review of the text, illustrations and original-design layout of the book, and if the review is negative, the subsequent reviews of the improved variants will be already paid at the expense of the publishing house (by deducting the sums paid for these reviews from the contract amount). After the second negative review, the Foundation may terminate the contract with the publishing house and announce a new tender, in which the publishing house cannot participate.
 - b) the conditions and terms of payment (50% of the contract amount will be paid after approval of the original layout of the book including all components, i.e. text, illustrations, cover, etc., and 50% - after the presentation of documentation confirming the publishing of the work and 2 copies of the book.)
10. Other technical specifications
11. Currency of the bid (specifying that payments will be made in MDL at NBM rate on the day of transfer)
12. Place and deadline for submission of bids (day and time, but not before 7 days of tender announcement day)
13. Contact person

21. Peculiarities of Equipment Procurement

In the case of equipment procurement falling under this Regulation, the estimated budget of the project set in agreement with the person responsible for Information Technologies in the Foundation and proceeding from the average price of the equipment set during the last tender held by the Foundation, will be presented for review and decision to the program board or the National

Board.

The Procurement Commission is made up of at least five members appointed by order of the Executive Director, including the person responsible for the organization of the procurement. At least one member of the Commission will be an independent expert in information technology. The representative of the beneficiary is a member of the Commission on an ex-officio basis and has a decisive vote in case of equality of votes.

In drawing up the request for bids, the responsible person for information technologies in the Foundation will be consulted.

The request for bids for procurement of equipment will include:

1. Name of program or project (beneficiary) organizing the procurement
2. Name of equipment and technical specification
3. Terms of delivery and guarantee
4. Other technical specifications
5. In case of a justified need, the maximum bid price may be announced (usually approved by the program board or the National Board), specifying whether it includes VAT or other taxes. It should be pointed out that SFM accepts bids for higher performance equipment, if it falls within the maximum price limit.
6. Currency of the bid (specifying that payments will be made in MDL at the NBM rate on the day of the bank transfer)
7. Place and deadline for submission of bids (day and time, but not before 7 days after the tender was announced)
8. Contact person

In selecting the optimal offer, the Commission will take account of:

- a) the proposed price, taking into account the delivery of equipment conditions;
- b) technical performance of equipment;
- c) quality of equipment;
- d) the existence of an authorized service center for the proposed equipment;
- e) the terms and guarantee conditions.

In justified cases, the Commission may decide on the procurement of equipment with a better performance than that indicated in the request for proposals, but within the limits of the maximum amount approved by the program board or the National Board.

